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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/777,667	02/10/2004	J. Kevin Alsobrook	8590-101	5868

36412 7590 10/06/2004
DUCKOR SPRADLING METZGER
401 WEST A STREET, SUITE 2400
SAN DIEGO, CA 92101-7915

EXAMINER

KUHNS, SARAH LOUISE

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 10/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/777,667

Applicant(s)

ALSOBROOK ET AL.

Examiner

Sarah L Kuhns

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) 20-24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-19, drawn to a method of processing vegetables having bulbs including root crowns, classified in class 426, subclass 481.
 - II. Claims 20-24, drawn to apparatus for processing vegetables having bulbs including root crowns, classified in class 99, subclass unknown.
2. Inventions I and II are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the method as claimed can be practiced by hand. It does not require a machine to apply opposing forces to a vegetable to separate the roots or portions thereof at or near the root crown from the remaining portion of the vegetable.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.
4. During a telephone conversation with Bernard Kleinke on 09/15/2004, election was made without traverse to prosecute the invention of Group I, claims 1-19. Claims 20-24 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Specification

5. The disclosure is objected to because of the following informalities: On the first line of page 5, "the rollers 65 and 67" should be "the rollers 61 and 63."

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claims 6-9 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 6 uses the term "singulating" and claims 7-9 use the term "singulated." These terms are not defined in the specification. The examiner has interpreted "singulating" to mean one at a time and "singulated" to mean singled out.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cordes, U.S. Patent 3,636,999 in view of <http://www.cfic.ca>.

In regard to claim 1, Cordes discloses a method of processing vegetables, such as garlic and onions (column 2, line 27), having bulbs including root crowns comprising applying opposing forces to each one of the vegetables to separate the roots or portions thereof at or near the root crown from the remaining portion of the vegetable (column 1, line 64). Cordes does not expressly disclose the packaging of the vegetables in a container, but it is well established in the field to package vegetables before sale for consumer convenience as evidenced by the Canadian Food Information Council at <http://www.cfic.ca>. It would therefore be obvious to package the vegetables in order to have greater appeal to consumers in our fast paced society that are interested in time saving foods.

In regard to claim 2, Cordes discloses a method wherein the applying opposing forces includes applying force to the bottom portion of each one of the vegetables below the intersection of the root crown and the bulb in opposition to force applied to the top portion of the vegetable to separate the bottom portion from the vegetable at the root crown (column 1, line 61).

In regard to claims 3 and 5, it would be expected and further obvious in Cordes that the separated portions of the vegetables are discarded since the entire point of the

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process is to remove the roots of the vegetable before sale and the roots are not eaten or otherwise useful.

In regard to claim 4, Cordes discloses a method wherein applying force to the bottom portion includes moving the bottom portion of the vegetables into engagement with at least one pair of rollers (column 1, line 31 and figure 3).

In regard to claim 6, Cordes discloses singulating a group of vegetables prior to the applying of force as demonstrated by figure 3.

In regard to claim 7, it is well known in the field to wash vegetables before sale. Therefore, it would have been obvious to wash the vegetables of Cordes in order to remove dirt and debris in order to increase the aesthetic appeal of the vegetables.

8. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cordes and <http://www.cfic.ca> as applied to claim 1 above, and further in view of Raaij, U.S. Patent 3,602,279.

Cordes does not disclose peeling the foreskins from the vegetables. Raaij, however, teaches a method for skinning onions or like vegetables (column 1, line 34). Raaij further discloses that a machine for peeling the foreskins from vegetables can be synchronized with an apparatus for removing the root portions of the vegetables (column 1, line 44). It would therefore be obvious to peel the foreskins from the derooted vegetables in order to remove unnecessary material from the vegetable so as to increase the aesthetic appeal of the vegetables.

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9. Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cordes and <http://www.cfic.ca>, further in view of Raaij, U.S. Patent 3,602,279, as applied to claim 8 above, in view of Losito, U.S. Patent 3,734,004.

In regard to claim 9, Cordes does not disclose supporting the vegetable vertically by its stalk. However, Losito teaches supporting the vegetable vertically by its stalk (figure 4) while its roots are severed. It would therefore be obvious to support the vegetable by its stalk while its roots are pulled out in order to prevent injuries or bruising during removal of the roots as clearly taught by Losito.

In regard to claim 10, Cordes further discloses translating the vegetables along a path of travel (column 5, line 23).

10. Claims 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cordes and <http://www.cfic.ca>, as applied to claim 1 above, in further view of Kruithoff, U.S. Patent 4,753,296.

In regard to claim 11, Cordes discloses translating the vegetables along a path of travel into engagement with a de-rooter (column 5, line 23) to apply force to the bottom portion of the vegetable (column 1, line 61), but fails to disclose translating the vegetables substantially vertically. However, Kruithoff teaches translating the vegetables substantially vertically along a path of travel into engagement with a de-rooter (figure 4). It would therefore be obvious to translate the vegetables substantially vertically rather than horizontally if circumstances, such as those during harvesting, made it preferable to do so.

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In regard to claim 12, Cordes further discloses translating the vegetables to a second de-rooter to repeat the applying force to the bottom portion of the vegetables (column 1, line 31).

11. Claims 13-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cordes and <http://www.cfic.ca>, in further view of Kruithoff, as applied to claim 11 above, in further view of Losito.

In regard to claim 13, Cordes fails to disclose an opposing force caused by the holding the upper portion of the vegetables. However, Losito teaches the holding of the upper portion of a vegetable while the roots are removed (figure 4). It would therefore be obvious to hold the upper portion of the vegetable when removing the roots by pulling rather than by severing in order to provide support for the vegetable and increase the opposing force for more efficient pulling of the roots.

In regard to claim 14, it is well known in the field to wash vegetables before sale. Therefore, it would have been obvious to wash the vegetables of Cordes in order to remove dirt and debris in order to increase the aesthetic appeal of the vegetables.

In regard to claim 15, it is well known in the field to group vegetables before sale in order to provide a unit for sale comprising a number of the vegetables.

In regard to claim 16, Cordes discloses a de-rooter that includes a pair of members rotating in opposite directions (figure 3).

In regard to claims 17 and 18, Cordes discloses a pair of rotating members comprising a pinch roller and a meshing gear (figure 3). It would be an obvious alternative to use either a pair of pinch rollers or a pair of meshing gears to accomplish

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the same task of removing the crown and/or roots from the vegetable without bruising the vegetable.

In regard to claim 19, Cordes fails to disclose a moveable clamp. Losito teaches that a vegetable can be clamped between foam pieces that are attached to parallel belts when de-rooting (figure 4). Losito also teaches that the clamp is moveable because when the vegetable reaches the end of the belt, the opposing foam pieces separate to release the vegetable (figure 1). Therefore, it would have been obvious to use clamps in Cordes in order to prevent injuries or bruising during removal of the crown and/or roots.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- a. Ogawa, et al., JP 04053477 A, Disuse part remover for root vegetables
- b. Kawaguchi, et al., JP 09037626 A, Root vegetable harvester
- c. Bruynooghe, FR 2747273 A1, Removal of roots, leaves and debris from vegetables and fruit
- d. Iwanek, DE 4218210 A1, Vegetable produce processing, esp. for removal of roots from flower bulbs – holds upwards roots after orientation in air stream for bulb to be rotated to tear off roots


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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sarah L. Kuhns whose telephone number is 571-272-1088. The examiner can normally be reached on Monday - Friday from 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SLK


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